

SENATE BILL REPORT

SHB 1043

As Reported by Senate Committee On:
Health Care, March 28, 2017

Title: An act relating to nonpublic personal health information.

Brief Description: Addressing nonpublic personal health information.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Robinson, Harris, Clibborn, Riccelli, Cody, Jinkins, Tharinger, Appleton and Sawyer; by request of Insurance Commissioner).

Brief History: Passed House: 3/06/17, 97-1.

Committee Activity: Health Care: 3/27/17, 3/28/17 [DPA, w/oRec].

Brief Summary of Amended Bill

- Provides that nonpublic personal health information in the custody of the Insurance Commissioner is confidential and not subject to public disclosure.

SENATE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended.

Signed by Senators Rivers, Chair; Becker, Vice Chair; Cleveland, Ranking Minority Member; Kuderer, Assistant Ranking Minority Member; Bailey, Conway, Fain, Keiser, Miloscia, O'Ban and Walsh.

Minority Report: That it be referred without recommendation.

Signed by Senator Mullet.

Staff: Mich'l Needham (786-7442)

Background: Disclosure of Public Records. The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests, an agency must delete identifying details

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when it makes a public record available. A person's right to privacy is violated only if disclosure would be highly offensive to a reasonable person and is not of legitimate concern to the public. The PRA is liberally construed and its exemptions narrowly construed. If the PRA conflicts with any other law, the provisions of the PRA govern.

The PRA provides exemptions from disclosure for certain health care information, such as: (1) health information obtained under specified circumstances by the Pharmacy Quality Assurance Commission, the Department of Health, and quality improvement committees; (2) claims data provided to the all-payer claims database; and (3) complaints under the Uniform Disciplinary Act. In addition, the PRA provides exemptions for certain information filed with the Insurance Commissioner under the insurance code, including confidential or privileged information provided by: (1) the National Association of Insurance Commissioners; (2) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities; or (3) state agencies.

Confidentiality of Health Care Information. The federal Health Insurance Portability and Accountability Act establishes standards for the disclosure of protected health information by covered entities—i.e., health plans, health care clearinghouses, and certain health care providers—and their business associates. The state Uniform Health Care Information Act governs the disclosure of health care information by health care providers and their agents or employees.

Summary of Amended Bill: All nonpublic personal health information obtained by, disclosed to, or in the custody of the Insurance Commissioner (Commissioner) is confidential and not subject to public disclosure under the PRA, regardless of the form of the information. The Commissioner may not disclose nonpublic personal health information, except in furtherance of regulatory or legal action brought as part of the Commissioner's official duties. Prior to the release of any nonpublic personal health information, the OIC must obtain patient consent, and the consent form must indicate what information is being shared and for what purpose.

The Commissioner may share information with the National Association of Insurance Commissioners, regulatory and law enforcement officials, the federal government, and international authorities if the recipient agrees to maintain confidentiality. The Commissioner may receive information from these entities and must maintain the information as confidential or privileged under the laws of the jurisdiction that is the source of the information. No waiver of a claim of confidentiality or privilege occurs as a result of this authorized disclosure or sharing. The Commissioner may enter into agreements on the sharing and use of information.

Nonpublic personal health information means health information: (1) that identifies an individual who is the subject of the information; or (2) with respect to which there is a reasonable basis to believe the information could be used to identify an individual. Health information means information or data—other than age or gender—whether oral or recorded, created by or derived from a health care provider, patient, policyholder, or enrollee, that relates to: (1) an individual's past, present, or future physical, mental, or behavioral health or condition; or (2) the provision of or payment for the provision of health care to an individual. Health care means preventive, diagnostic, therapeutic, rehabilitative, maintenance, or

palliative care services, procedures, tests, or counseling that: (1) relates to the physical, mental, or behavioral health condition of an individual; (2) affects the structure or function of the human body or any part of the human body, including blood, sperm, organ, or other tissue banking; or (3) prescribes, dispenses, or furnishes to an individual drugs, biologicals, medical devices, or health care equipment and supplies.

EFFECT OF HEALTH CARE COMMITTEE AMENDMENT(S): The OIC must obtain patient consent prior to the release of nonpublic personal health information. The consent form must indicate what information is being shared and for what purpose.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill does one thing and one thing only; it keeps personal health information confidential and outside public disclosure. We receive personal information as part of the complaints and we need to protect that information. This is a good little bill and plans support it. This bill makes sense and it reflects the current practice with providers and patients to ensure personal health information is protected and consistent with the federal law. This ensures that if the information leaves the provider it remains protected.

Persons Testifying: PRO: David Knutson, Association of Washington Healthcare Plans; Lonnie Johns-Brown, Office of the Insurance Commissioner; Kathryn Kolan, Washington State Medical Association.

Persons Signed In To Testify But Not Testifying: No one.